



December 15, 2020

VIA EMAIL DELIVERY

The Honorable James E. Clyburn
Chairman
Select Subcommittee on Coronavirus Crisis
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Clyburn:

I write in response to your December 10, 2020, letter to Department of Health and Human Services (HHS) Secretary Alex M. Azar II and Centers for Disease Control and Prevention (CDC) Director Dr. Robert R. Redfield. HHS strongly disagrees with the description of events outlined in the letter and maintains that the integrity of CDC's Morbidity and Mortality Weekly Report (MMWR) scientific review process has never been compromised in this Administration.

For months, HHS has worked to reach an accommodation with the Subcommittee to secure the voluntary appearance of the requested witnesses and the production of responsive documents. We are disappointed by the misleading narratives placed in the media by your staff. I write to set the record straight on our efforts to accommodate this Subcommittee and reiterate our request for the public release of the December 7, 2020, transcript of MMWR Editor-in-Chief Dr. Charlotte Kent in full so that the American public may know the truth.

Dr. Kent's interview established there was no political interference in the publication of MMWR Articles

On December 7, 2020, HHS facilitated a voluntary transcribed interview with Dr. Kent and Subcommittee staff. Dr. Kent is a 13-year CDC career employee working on the *MMWR* in a senior capacity since 2014.

On December 10, the Subcommittee allowed the Department to view the transcript for four hours on the condition that HHS "agree not to download, take screen shots, or otherwise make a physical copy of the transcript."¹ Contrary to the claims in the Subcommittee's letter, even the portions of Dr. Kent's testimony the Subcommittee has elected to make public demonstrate that the scientific integrity of the MMWR has never been compromised:

Minority Counsel: And under your watch, being in charge, editor-in-chief of the MMWR, do you ever let anything affect the scientific integrity of the MMWR?

¹ Email from staff of H. Subcomm, on Coronavirus Crisis to Dep't of Health and Human Servs. staff, Dec. 10, 2020.

Dr. Kent: That's correct. I am very committed to maintaining the scientific integrity of the MMWR.²

Critically, Dr. Kent confirmed that no one outside of the CDC ever delayed the publication of an MMWR:

Majority Counsel: Okay. You actually – you said a second ago that external forces did not cause the delay of this report. Did external forces cause the delay of any other report?

Dr. Kent: No.³

In fact, Dr. Kent stated that Administration officials, including Dr. Redfield and Dr. Birx, wanted to publish the Georgia Summer Camp MMWR quickly because of its importance to the general public.

Majority Counsel: You referenced this before, but this says, “Birx requests that we publish quickly.” Do you know why she wanted to publish quickly?

Dr. Kent: It was during a time where there was a lot of interest in infections among children...⁴

The Subcommittee's claim that the Georgia summer camp MMWR was delayed to avoid conflicting with Dr. Redfield's congressional testimony is inappropriate. As an initial matter, emails voluntarily produced by the Department to the Subcommittee show that CDC career leadership did not believe the conditions in the summer camp were sufficiently similar to a school setting to justify making the comparison in the article.⁵ Moreover, the *two-day* delay the Subcommittee is concerned about was due to the CDC's publication processes and so as to ensure the MMWR was given appropriate attention by the public:

Majority Counsel: On Exhibit 13, four emails down the chain, you write, “Just got the call. Request a delay until Friday by Dr. Redfield. Timing will be better.”...Do you have any understanding of why was the timing better?

Dr. Kent: Well, one, it was only a 2-day delay, so its not a long delay, and it couldn't be - - because of [the CDC's] production processes, it couldn't be - - it couldn't be released on Thursday because that's when [the CDC] does regular

² Press Release, Select Subcommittee on the Coronavirus Crisis Minority Staff, Select Subcommittee Witness Confirms No Politicization of CDC Scientific Publications, (Dec. 10, 2020), <https://republicans-oversight.house.gov/release/select-subcommittee-witness-confirms-no-politicization-of-cdc-scientific-publications/>.

³ *Id.*

⁴ *Id.*

⁵ See SSCCManual-000051; SSCCManual-000071(Dr. Anne Schuchat to Dr. Charlotte Kent, “...Obviously an overnight camp is more like a household than a school and we need to be careful about that kind of introductory sentence.”).

content. So as I understood, that there was a desire to make the communication about this report, you know, kind of front and center.”⁶

Notably, the Subcommittee decided not to quote Dr. Kent’s testimony regarding the MMWR on hydroxychloroquine and chloroquine prescribing patterns.⁷ Prior to Dr. Kent’s interview, the Subcommittee claimed that this MMWR was delayed for months by political appointees. In her interview, Dr. Kent testified that the MMWR was actually delayed because edits by senior career CDC officials seeking to improve the article’s clarity necessitated an extensive, time-consuming rewrite. Dr. Kent further explained that it is common for COVID-19 MMWRs to be slightly delayed given the importance of providing accurate scientific information to the public.

Majority Counsel: Is this the only time that you’re - - that you can recall at any - - at any point in time during your response or otherwise where somebody asked you to delay the publication of an MMWR, other than for a, you know, scientific review and whatnot?

Dr. Kent: I certainly would have discussions about that all the time....Because we do try to be - - again, effectively communicate things and to have things be - - again, effectively communicate things and to have things be - - you know, the timing not be disruptive, it didn’t stand out especially in my mind that this, you know. And again, it was only delaying it by 2 days, so. You know, as we - - as you - - if you go through, [the CDC] delayed a number of reports.⁸

With respect to Dr. Redfield’s comments, Dr. Kent explained that Dr. Redfield’s suggested edits to an MMWR concerning summer camps in Georgia were appropriate, nuanced, and did not alter the scientific integrity of the report:

Majority Counsel: This email says -- he writes here at the top: “Two edits from Dr. Redfield. They’re highlighted in yellow. They should be incorporated...” Do you recall anything just generally about the - - whether you had any reaction to receiving the edits?

Dr. Kent: I have been very diligent about maintaining the scientific integrity of things that are published in MMWR, reports published in MMWR, and there was no cause for alarm by whatever --- whatever the comment was. So I feel like I can say with assurance that that comment did not change the scientific integrity of the report, that it was most likely a kind of nuanced, you know, statement that didn’t change the science. So, you know, that’s...I was not concerned by it.⁹

⁶ Press Release, Select Subcommittee on the Coronavirus Crisis Minority Staff, Select Subcommittee Witness Confirms No Politicization of CDC Scientific Publications, *supra* note 2.

⁷ Bull-Otterson L, Gray EB, Budnitz DS, et al. Hydroxychloroquine and Chloroquine Prescribing Patterns by Provider Specialty Following Initial Reports of Potential Benefit for COVID-19 Treatment — United States, January–June 2020. MMWR Morb Mortal Wkly Rep 2020;69:1210–1215. DOI: <http://dx.doi.org/10.15585/mmwr.mm6935a4external> icon.

⁸ Press Release, Select Subcommittee on the Coronavirus Crisis Minority Staff, Select Subcommittee Witness Confirms No Politicization of CDC Scientific Publications, *supra* note 2.

⁹ *Id.*

Dr. Kent further testified that the unprecedented nature of the COVID-19 pandemic required a whole-of-government response and that she had no concerns about HHS and White House officials added to the pre-publication distribution of MMWR summaries:

Majority Counsel: What took place to prompt [Dr. Robert Redfield and Dr. Deborah Birx] to be added to the concurrence or concurrence be required form them?

Dr. Kent: I mean, the COVID-19 response is something that is unprecedented...we needed to function as a full -- a whole Government. And you know, this response has required more engagement across the entire Government than anything, you know, in the last 50 or 60 years.

[Break]

Majority Counsel: Did you have any questions or concerns about [HHS and White House leadership being added to pre-publication distribution of MMWR summaries] at the time?

Dr. Kent: No, not really. Again, it's with the philosophy this is an unprecedented time that we need to be coordinated in our mission.¹⁰

These excerpts illustrate that the Subcommittee's claims that politics influenced the MMWR publication process would be clearly refuted by the full transcripts that the Subcommittee should release immediately.

HHS continues to adhere to the congressional accommodation process

Enclosed with this letter is an addendum detailing the Department's efforts to facilitate the voluntary production of documents and witnesses. The enclosure will show that your staff's refusal to answer routine questions about the interviews led to scheduling delays. For example, it took more than six weeks for your staff to clearly articulate the scope of the interviews so that the Department could meaningfully prepare witnesses for their interviews.

Additionally, in two instances—the two weeks following the Department's October 7, 2020, email and the week after HHS first proposed dates for interviews—Subcommittee staff failed to respond for extended periods of time to good faith efforts by the Department to resolve the differences in our respective positions. It is our belief that had the Subcommittee worked with the Department in a timely manner, the Subcommittee would likely be in receipt of significantly more documents than it has now, and the interviews would be completed.

The Department began producing documents in a timely manner once the Subcommittee notified us that it wished to prioritize the recipient of documents over the scheduling of interviews. HHS made its first production on November 10, and made subsequent productions on November 13,

¹⁰ *Id.*

November 20, November 25, December 4, and December 15. To date, the Department has produced over 14,700 pages of documents in approximately five weeks.

Contrary to the Subcommittee's claims, the Department never committed to producing all of the materials by a date certain. The Department *targeted* complete production by a certain date. HHS set the target dates on the number of responsive documents in possession from manual pulls by CDC career personnel. Subsequent document pulls had generated a larger number of potentially responsive documents than was anticipated. In total, there are over one million documents slated for agency review and a team of six attorneys are dedicating nearly all of their time to reviewing documents for this request. Over 90 percent of the Department's entire oversight portfolio work has been dedicated to responding to this request and working through the accommodations process for interviews. Simply put, a subpoena for documents is unnecessary, and will not lead to faster receipt of the Subcommittee receiving documents or getting interviews any quicker than it already is.

Dr. Kent's testimony makes clear that an interview of Dr. Redfield is not warranted at this time.

The Subcommittee's December 10 letter requests a transcribed interview with Dr. Redfield be scheduled for December 17, 2020, on the grounds that Dr. Redfield purportedly ordered CDC staff to delete an email they received from Dr. Alexander. The email in question has not been deleted from CDC or HHS systems. To assist the Subcommittee's inquiry, three versions of the email, one from Dr. Redfield's email account and two from Dr. Alexander's email account, are enclosed herewith. Moreover, *Politico* obtained a reported copy of Dr. Alexander's email and published excerpts of it in a September 11, 2020, article. The Subcommittee was aware of the *Politico* article (and, thus, the non-deletion of the email) because you cited to it in letters to the Department and your staff used it as an exhibit during Dr. Kent's interview.

A full rendition of Dr. Kent's testimony would show that that she heard about the purported deletion order third-hand as follows: Dr. Redfield purportedly told Dr. Michael Iademarco, CDC's director of the Center for Surveillance, Epidemiology, and Laboratory Services (CSELS), that CDC staff should delete the email, of which multiple copies are enclosed with this letter. Dr. Iademarco then purportedly told Dr. Kent's deputy editor who then told Dr. Kent. Your letter omits that Dr. Kent further testified that these purported instructions were accompanied by an order from CDC leadership to ignore Dr. Alexander's comments, assurances from CDC leadership that they would not allow Dr. Alexander to interfere with the MMWRs, and with the explanation that Dr. Redfield and Dr. Iademarco's emails are permanently archived and so career staff did not need to worry about record retention.¹¹ In short, due to their seniority, neither Dr. Redfield nor Dr. Iademarco can permanently delete their emails. The sequences of events in Dr. Kent's testimony is consistent with Dr. Redfield's prior congressional testimony, obviating the need for a transcribed interview.

¹¹ The account of Dr. Kent's testimony is based on agency personnel's notes as the Subcommittee has yet to provide the Department with a copy of the transcript or make the transcript available to the public.

Your staff has violated the Rules of Professional Responsibility

During the December 7 interview of Dr. Kent, majority counsel repeatedly sought to violate the attorney-client privilege. Majority counsel was warned multiple times by HHS counsel that their line of questioning was inappropriate and unethical. Department counsel gave majority counsel multiple opportunities to rephrase their line of questioning and majority counsel refused. After the interview, Department counsel postponed the remaining interviews pending assurances that majority counsel would act according to standard ethical and professional responsibility obligations.

Specifically, during the interview with Dr. Kent, majority counsel questioned her on how she prepared for her voluntary transcribed interview, a violation of attorney-client privilege. Majority counsel was advised that their line of questioning infringed on the attorney-client privilege at least four times. In contravention of obligations under the Rules of Professional Conduct, majority counsel refused to clarify that their questioning was not intended seek to invade the attorney-client privilege. Eventually, HHS counsel phrased the question to Dr. Kent in a way that did not seek to invade the attorney-client privilege. Dr. Kent unequivocally stated that she was “never instructed by anyone to withhold anything from Congress.”¹²

Following the conclusion of the interview, HHS counsel wrote to Committee staff raising concerns about Majority counsel’s conduct and asked for two assurances from your staff before interviews could continue. First, the Department asked for an assurance from majority counsel that they would not again attempt to invade the attorney client privilege. Second, majority staff must assure the Department that it has admonished majority counsel of their professional responsibility obligations not to deliberately seek to invade the attorney-client privilege.

The Department has not received the assurances it has sought and which are needed to resolve the current impasse. Instead, the Subcommittee has accused the Department of “baselessly attacking the Select Subcommittee staff’s integrity as a pretextual justification” of cancelling the remaining interviews. The Department’s concerns are not baseless attacks against the integrity of your staff. A full fair reading of the entire transcript and subsequent email correspondence shows that Subcommittee staff had multiple opportunities to clarify or alter their improper line of questioning and they refused to do so.

Conclusion

HHS has strived to facilitate the voluntary participation in interviews and to seek reasonable accommodations with the Subcommittee. The Department has produced documents as quickly as it can given resource constraints and the lifesaving mission Department personnel are undertaking responding to the COVID-19 pandemic. Issuing a subpoena will not speed the production of documents. The additional documents requested in the December 10, 2020, letter would be captured in searches for documents responsive to the Subcommittee’s original, broad September 14, 2020 request and will continued to be produced as quickly as resources allow.

¹² *Id.*

Since the conclusion of Dr. Kent's interview on December 7, the Department has asked for two reasonable accommodations. First, we asked that Subcommittee legal counsel agree not to deliberately invade the attorney-client privilege. Second, we asked Subcommittee counsel to remind themselves of their professional responsibilities as attorneys under the Rules of Professional Responsibilities. The Subcommittee staff's refusal to meet basic standards of the practice of law are why the remaining interviews have been postponed.

As the Department continues its fight against the COVID-19 pandemic, including overseeing a nationwide vaccination campaign, the availability of CDC subject matter experts and leadership is limited. We are assessing the availability of the remaining witnesses and will follow up in the near future.

Sincerely,

Sarah Arbes
Assistant Secretary for Legislation

Enclosure

Timeline of Accommodations Offered by HHS

On September 14, 2020, you wrote to Secretary Azar requesting documents and transcribed interviews with seven individuals.¹³ The predicate for requesting the interviews focused on the publication and clearance process for MMWR articles. However, the Subcommittee articulated a broader scope for proposed interviews as follows:

*Given the crucial and pressing need for truthful scientific information during this ongoing public health crisis, the Select Subcommittee is seeking to determine the scope of political interference with CDC's scientific reports and other efforts to combat the pandemic, the impact of this interference on CDC's mission, whether this interference is continuing, and the steps that Congress may need to take to stop it before more Americans die needlessly.*¹⁴

The scope described in the September 14 letter is overly broad. As worded, the document requests asked the Department to review and produce every communication sent or received by the over 150 political appointees at HHS relating to COVID-19. Nonetheless, the Subcommittee requested that the interviews begin on September 22, 2020, and to receive documents by September 28, 2020—a clear indication that the Subcommittee requested to conduct interviews prior to the receipt of any documents.

On September 18, 2020, HHS responded to your September 14 letter.¹⁵ The response addressed routine issues that needed to be resolved before scheduling the requested interviews and then addressed the substance of the Subcommittee's allegations. First, HHS outlined the eight-step MMWR publication process, including that Dr. Alexander provided input only at step 6 in the process. HHS further explained that "at no time was CDC required to accept [Dr. Alexander's] recommendations."¹⁶ Dr. Kent confirmed the accuracy of these representations in her interview with Subcommittee staff on December 7, 2020. Second, the Department explained that Mr. Caputo was on medical leave, Dr. Alexander had since left the Department and thus neither could be made available for interviews.

Third, the Department noted that providing "two days' notice to commit to scheduling seven witnesses for interviews taking place less than a week later cannot represent a good faith effort to accommodate a co-equal branch of government."¹⁷ Finally, the Department sought "additional clarity on how conducting transcribed interviews on such short notice and prior to the receipt of any of the requested documents satisfies the requirement that oversight inquiries be conducted pursuant to a valid legislative purpose."¹⁸ Longstanding Supreme Court precedent requires that

¹³ Letter from James E. Clyburn, Chairman, H. Select Subcomm. on the Coronavirus Crisis, to Alex M. Azar II, Secretary, Dep't of Health and Human Servs., Sept. 14, 2020. The Subcommittee requested transcribed interviews with two HHS employees, Michael Caputo and Paul Alexander, and five CDC employees, Charlotte Kent, Kate Galatas, Dr. Anne Schuchat, Nina Witofski, and Trey Moller.

¹⁴ *Id.*

¹⁵ Letter from Sarah C. Arbes, Ass't Sec. for Legislation, Dep't of Health and Human Servs. to James E. Clyburn, Chairman, H. Select Subcomm. on the Coronavirus Crisis, Sept. 18, 2020.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

any congressional oversight request further a valid legislative purpose.¹⁹ The September 18, 2020, letter concluded by emphasizing that the Department “welcome[d] the opportunity to continue to work with the Subcommittee through the accommodations process for this and other requests before the Department.”²⁰

On September 22, 2020, you wrote again to Secretary Azar.²¹ In this letter, you explained how you believed conducting the interviews furthers a valid legislative purpose.²² You agreed to postpone Mr. Caputo’s interview given his medical leave and asked that HHS provide contact information for Dr. Alexander despite his departure from HHS.²³ With respect to document production, you explained that your perceived “serious and ongoing nature” of alleged political interference in the MMWR process “makes it imperative that the Select Subcommittee conduct transcribed interviews quickly, without waiting for HHS to produce documents.”²⁴ HHS understood this to mean that the Subcommittee was reiterating its desire to conduct interviews *prior* to the receipt of documents. You asked that HHS respond within two days to confirm whether HHS would make the requested witnesses available beginning the week of September 28, 2020.²⁵

HHS responded to your September 22 letter on September 25.²⁶ The introduction of the letter explained that the Department’s response did not “represent a rejection of the Subcommittee’s request for interviews or a refusal to make witnesses available for transcribed interviews in the future” and reiterated that the letter represented a “good-faith effort at accommodation to better understand important matters relevant to the interview request.”²⁷ The letter then raised a number of substantive issues. First, HHS noted that the Subcommittee’s insistence on conducting transcribed interviews prior to the receipt of documents was unusual. Almost every other oversight request to the Department sought documents prior to speaking with Department officials.²⁸ Second, the Department questioned why the Subcommittee’s insistence that producing documents on a rolling basis was “not a reasonable accommodation” as it is a well-established practice in Congressional oversight and the Subcommittee had accepted rolling productions for other engagements.²⁹ Third, HHS raised issues with the Subcommittee’s arbitrary and borderline abusive deadlines for responses. Specifically, that the Subcommittee’s two-day deadlines for responses represented “an alarming departure from traditional norms of

¹⁹ *Watkins v. United States*, 354 U.S. 178, 187, (1957).

²⁰ Letter from Sarah C. Arbes, Ass’t Sec. for Legislation, Dep’t of Health and Human Servs. to James E. Clyburn, Chairman, H. Select Subcomm. on the Coronavirus Crisis, Sept. 18, 2020.

²¹ Letter from James E. Clyburn, Chairman, H. Select Subcomm. on the Coronavirus Crisis, to Alex M. Azar II, Secretary, Dep’t of Health and Human Servs., Sept. 22, 2020.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Letter from Sarah C. Arbes, Ass’t Sec. for Legislation, Dep’t of Health and Human Servs. to James E. Clyburn, Chairman, H. Select Subcomm. on the Coronavirus Crisis, Sept. 25, 2020.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*, citing Letter from James E. Clyburn, Chairman, H. Select Subcomm. on the Coronavirus Crisis, to Alex M. Azar II, Secretary, Dep’t of Health and Human Servs., Sept. 22, 2020.

congressional oversight and the Subcommittee has not sufficiently articulated why such short deadlines are demonstrably critical to its oversight work.”³⁰

Despite these concerns, HHS wrote that the Department remained willing to assess the availability of the requested CDC witnesses. The Department also asked a number of reasonable questions concerning the length of interviews, the role of agency counsel, the rights of the witnesses, and the scope of the interviews.³¹

Subcommittee staff responded via email on September 27, 2020.³² The email answered some of the questions posed in HHS’s September 25 letter, but failed to adequately respond to others. Your staff explained that for the voluntary interviews, “witnesses are not placed under oath but are reminded of their legal obligation to tell the truth.”³³ Your staff further explained that “witnesses are permitted to bring personal counsel to the interview,” and that agency counsel would be “permitted to attend” the interviews if the witnesses appeared voluntarily.³⁴ The interviews would be conducted by videoconference and take approximately four hours, with majority and minority staff alternating questions for roughly hour-long increments.³⁵

With respect to scope, your staff repeated—verbatim—the broad and unworkable description from the Subcommittee’s September 14 letter.³⁶ It provided none of the clarifications that the Department requested in order to be able to meaningfully prepare for transcribed interviews. In closing, your staff’s email reiterated—for the third time—that it wanted to proceed with interviews prior to the receipt of documents and proposed scheduling the first interview less than 36 hours after receipt of the email.³⁷

The next day, HHS staff replied via email noting that “at no point did the Department reject the Chairman’s request for interviews.”³⁸ We explained the steps the Department was taking to facilitate the voluntary appearance of witnesses for transcribed interviews. Since your staff indicated that interviewees could be subject to criminal liability and could hire private counsel, HHS explained that it was determining whether the witnesses wished to exercise their right to hire private counsel. We also explained that HHS was determining the availability of the witnesses to sit for interviews.

Attorneys from HHS’s Office of the General Counsel (HHS OGC) immediately engaged in discussions with the requested individuals. Those conversations occurred during the week of September 28. None of the requested individuals wished to hire private counsel at that time.

³⁰ *Id.*

³¹ *Id.*

³² Email from staff of H. Subcomm, on Coronavirus Crisis to Dep’t of Health and Human Servs. staff, Sept. 27, 2020.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Email from Dep’t of Health and Human Servs. staff to staff of H. Subcomm, on Coronavirus Crisis to, Sept. 28, 2020.

On Friday of that week, October 2, Secretary Azar testified before the Subcommittee and you asked him about scheduling transcribed interviews. Secretary Azar replied, “our staffs are working to secure the agreements on the procedures to make that happen. We want to make that happen. We’re still working on the final arrangements on that.”³⁹ He added that the Department and Subcommittee still “need[ed] to get to agreement on appropriate procedures to protect individuals.”⁴⁰ This was precisely what was happening as HHS OGC attorneys were assessing the witnesses desire to exercise their rights to hire private counsel and begin preparations for interviews.

On October 7, 2020, HHS wrote Subcommittee staff seeking clarity on a number of outstanding legal and logistical issues that needed to be addressed before interviews could be scheduled.⁴¹ The questions focused on the role of agency counsel, the scope of the interviews, the duration of the interviews, and the production of documents used to help the witnesses prepare for the interviews.

The Department sought additional information on the role of agency counsel. Previous correspondence from the Subcommittee explained that agency counsel would be “permitted to attend” transcribed interviews. HHS wanted the Subcommittee to confirm that agency counsel would be allowed to interpose objections and instructions to witnesses when questions implicated executive branch confidentiality interests.

With respect to scope, HHS explained, “The proposed scope of these transcribed interviews is too vague and too broad to allow CDC personnel to meaningfully prepare, certainly in the timeframe sought by the Subcommittee: ‘the scope of political interference with CDC’s scientific reports and other efforts to combat the pandemic, the impact of this interference on CDC’s mission, whether this interference is continuing, and the steps that Congress may need to take to stop it before more Americans die needlessly.’”⁴² HHS posed six basic questions aimed at clarifying the scope of the interviews in order to allow the Department to adequately prepare.

HHS explained that it was the Department’s understanding, based on the three previous communications from Subcommittee staff that the Subcommittee wanted to conduct the interviews prior to the receipt of documents. We explained that, based on that understanding, the Department would be reviewing documents as part of its internal preparations for interviews and that the Subcommittee should not expect to receive documents prior to the interviews. HHS offered again, “If the Subcommittee would like to receive documents prior to conducting transcribed interviews, please advise and we can shift our resources towards reviewing material for potential production to the Subcommittee.”⁴³

HHS concluded the email:

³⁹ Hybrid Hearing with Secretary of Health and Human Services Alex M. Azar II: Hearing before the H. Subcomm. on Coronavirus Crisis, 115 Cong. (2020) (Statement of Alex M. Azar II).

⁴⁰ *Id.*

⁴¹ Email from Dep’t of Health and Human Servs. staff to staff of H. Subcomm, on Coronavirus Crisis to, Oct. 7 2020.

⁴² *Id.*

⁴³ *Id.*

HHS remains committed to working in good faith with the Subcommittee to accommodate this and other requests. We will continue to prepare the CDC personnel you've identified while awaiting answers to these questions. Getting the Subcommittee's answers to the above questions is critical to informing witness preparation, advising the agency, and mutual expectation setting that should help minimize or avoid future disputes. Until these outstanding issues are resolved, it is not appropriate to commit to specific dates for interviews. This is especially true given the initial scope of the proposed interviews, the uncertainties regarding agency counsel representation, and lack of clarity as to how the Subcommittee would handle objections or assertions of privilege.⁴⁴

Your December 10 letter omits that HHS received no written or verbal response from the Subcommittee to these questions for more than two weeks. Your staff verbally expressed a desire to schedule interviews twice during the standing weekly calls between our staffs, but provided no proposed dates or answers to the Department's outstanding questions. HHS staff reiterated that it stood ready and willing to continue discussions about these issues with the goal of scheduling the voluntary interviews once an agreement was reached. Frankly, the Department was surprised by the Subcommittee's two week pause in negotiations.

The next correspondence the Department received from the Subcommittee was an October 22 letter that misstated the history of negotiations, accused the Department of deploying a "variety of dilatory tactics to block the Select Subcommittee's investigation" and needlessly threatened to subpoena the Department.⁴⁵ The October 22 letter was the first time the Subcommittee demanded that documents be produced in advance of the interviews; demanding documents by October 30, 2020, with interviews starting the week of November 2, 2020.

HHS responded on October 27, 2020.⁴⁶ The Department explained that the October 22 letter answered some of the questions from the Department's October 7 email, but two significant issues remained: the scope of the interviews, and the Subcommittee's shift to requesting documents prior to the commencement of interviews.

The Subcommittee's October 22 letter answered none of the questions the Department posed seeking to clarify the scope of the interviews. The Subcommittee simply referred to the broad and unworkable scope articulated in the September 14, September 22, and September 27, 2020 correspondences. Given the lack of direction from the Subcommittee, HHS provided clarity on the proposed scope of the interviews. As the Department wrote in our October 27, 2020 letter.

The most critical unanswered question from the Department's October 7, 2020, email remains the scope of the interviews. Your October 22, 2020, letter repeats the proposed scope previously outlined in the Subcommittee's September 14, September 22, and September 27, 2020, communications to the Department. As

⁴⁴ *Id.*

⁴⁵ Letter from James E. Clyburn, Chairman, H. Select Subcomm. on the Coronavirus Crisis, to Alex M. Azar II, Secretary, Dep't of Health and Human Servs., Oct. 22, 2020.

⁴⁶ Letter from Sarah C. Arbes, Ass't Sec. for Legislation, Dep't of Health and Human Servs. to James E. Clyburn, Chairman, H. Select Subcomm. on the Coronavirus Crisis, Oct. 27, 2020.

the Department has repeatedly stated, the proposed transcribed interviews scope of “political interference with CDC’s scientific reports and other efforts to combat the pandemic, the impact of this interference on CDC’s mission, whether this interference is continuing, and the steps that Congress may need to take to stop it before more Americans die needlessly” is too vague and too broad to allow the CDC personnel to meaningfully prepare, certainly in the timeframe sought by the Subcommittee.

To date, the Subcommittee has refused to explain what constitutes a “scientific report” or to provide any exhibits that it intends to enter into the record. The CDC has published thousands of documents containing scientific information relating to COVID-19. The Subcommittee’s report cites 47 alleged instances of “political interference” in the Administration’s coronavirus response. Identifying the specific instances of alleged political interference and relevant exhibits in advance of the interviews furthers the Subcommittee’s oversight goals as it will ensure the interviews are conducted efficiently and gives the CDC personnel being questioned the opportunity to refresh their recollection of the events the Subcommittee is examining.

It is fundamentally unfair to the CDC personnel being interviewed to refuse to tell them with any degree of specificity the topics on which the Subcommittee is going to question them. Without more information on the scope of the interviews, and given the Subcommittee’s desire to schedule the interviews immediately, the Department has no choice but to set the scope of the interviews. Accordingly, HHS and CDC will prepare the witnesses to answer questions regarding the CDC’s publication of Mortality and Morbidity Weekly Report (MMWR). The MMWR publication process was the major focus of the Subcommittee’s September 14, 2020, letter and a process of which the majority of the listed witnesses are knowledgeable. Questions unrelated to the MMWR publication process will draw objections and witnesses will be instructed not to answer. As always, the Subcommittee is free to submit written questions to the Department at any time.⁴⁷

The Department also noted the shift in the Subcommittee’s priorities as it wanted to now receive documents prior to the commencement of interviews. The Department noted that “pulling and reviewing documents for interview preparation is materially different than document review for purposes of producing documents to Congress. It is standard practice for any document that is produced to Congress to be reviewed for responsiveness, and properly redacted for privilege, other executive branch confidentiality interests, and personally identifiable information.”⁴⁸ With these concerns in mind, HHS asked the Subcommittee to confirm its shift in priorities, and proposed two potential timelines for interviews as follows:

If the Subcommittee wishes to receive documents prior to conducting interviews, HHS can commit to making an initial document production on November 9, with

⁴⁷ *Id.*

⁴⁸ *Id.*

*interviews to start the week of November 16. This time is needed to continue the collection of responsive documents, review, and prepare for production to the Subcommittee. If the Subcommittee wishes to conduct interviews without the receipt of documents, HHS can commit to scheduling interviews beginning the week of November 9.*⁴⁹

On October 28, 2020, Subcommittee staff responded via email. Subcommittee staff rejected the Department's proposed timeline for document production and refused to elaborate further on the scope of the interviews. Despite refusing to provide clarity that the Department had sought for weeks, Subcommittee staff accused the Department of seeking to "drastically restrict the scope of transcribed interviews."⁵⁰ Staff merely asked the Department to "confirm whether HHS will agree to the interview scope laid out in detail in Chairman Clyburn's letters on September 14, September 22, and October 22."⁵¹

HHS responded via email the same day, noting "we've explained time and again that the scope you've articulated in the correspondence of September 14, September 22, October 22, and yet again today is too broad for the Department to meaningfully prepare its witnesses. Our clarifying questions about the scope that have gone unanswered for weeks. It is the Department's goal and desire to facilitate the voluntary appearance of the individuals you have requested to interview, but you need to work with us."⁵² HHS and Subcommittee staff held a conference call the evening of October 28 where we finally received additional clarity on the scope of the interviews. Following the call, HHS agreed to make the witnesses available for voluntary interviews and began the document production process immediately.

On November 5, HHS proposed beginning the transcribed interviews on November 30 and provided a thorough accounting of witness availability for November 30 through December 4.⁵³ Subcommittee staff responded the same day and said they would get back to us early the following week.⁵⁴ The Subcommittee did not respond to the Department's offer to schedule voluntary interviews until November 13—nearly one full week after HHS proposed dates for interviews.⁵⁵ The Subcommittee proposed beginning interviews on December 3. We ultimately agreed to conduct the interviews during the week of December 7.

⁴⁹ *Id.*

⁵⁰ Email from staff of H. Subcomm, on Coronavirus Crisis to Dep't of Health and Human Servs. staff, Oct. 28, 2020.

⁵¹ *Id.*

⁵² Email from Dep't of Health and Human Servs. staff to staff of H. Subcomm, on Coronavirus Crisis to, Oct. 28 2020.

⁵³ Email from Dep't of Health and Human Servs. staff to staff of H. Subcomm, on Coronavirus Crisis to, Nov. 5, 2020.

⁵⁴ Email from staff of H. Subcomm, on Coronavirus Crisis to Dep't of Health and Human Servs. staff, Nov. 6, 2020

⁵⁵ Email from staff of H. Subcomm, on Coronavirus Crisis to Dep't of Health and Human Servs. staff, Nov. 13, 2020.